

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 505 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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RATHOD BALSINGJI LAXMANJI

Versus

DISTRICT MAGISTRATE MEHSANA

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Appearance:

MR ANIL S DAVE for Petitioner

MR KT DAVE AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 13/10/1999

ORAL JUDGEMENT

1. Heard the learned advocate Ms. Banna Datta for the petitioner and learned AGP Mr. K.T. Dave for respondent nos. 1, 2 and 3. The detention order dated 24.12.98 passed by respondent no.1-District Magistrate, Mehsana against the petitioner in exercise of power conferred under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ( PASA for short) is challenged in the present petition under Article 226 of

the Constitution of India.

2. The grounds of detention supplied to the petitioner under section 9(1) of the PASA, a copy of which is produced at Annexure :C inter alia indicate that six cases are registered at Mehsana Police Station against the petitioner in between 11.1.98 to 25.10.98 for the offences made punishable under the Bombay Prohibition Act. That foreign made liquor in different quantity is recovered and seized from the possession of the petitioner in each of the case. Furthermore, four witnesses have supplied information in respect to the petitioner and his anti-social activity on assurance of anonymity. The witnesses have stated the incidents dated 24.11.98, 25.11.98, 26.11.98 and 27.11.98. It is stated by the witnesses that the petitioner had claimed their vehicles in exchange and on refusal, the petitioner got enraged and started beating the witnesses whereby the witnesses though sustained injury, did not file complaint on account of fear of the petitioner. Two of the witnesses have stated that on 26.11.98 and 27.11.98, the petitioner had asked the witnesses to store illegal liquor brought by him. On refusal by the witnesses, the petitioner had beaten both the witnesses.

3. On the basis of the above-stated material, respondent no.1 has come to a conclusion that the petitioner is a "bootlegger" within the meaning of section 2 (b) of PASA. That the petitioner after getting released on bail in the successive case filed against him has continued his illegal activity and the enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his anti-social activity which is adversely affecting the maintenance of public order, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the impugned order is bad in law on account of delayed action taken by the authority. That the cases registered against the petitioner and mentioned in the grounds of detention are in between January, 1998 to October, 1998. That in a case registered vide CR No. 848/98, the petitioner was released on 26.10.98, however, no explanation is given by the detaining authority in the grounds of detention for taking impugned action on 24.12.98. Even the statements recorded of anonymous witnesses are recorded in the last week of November, 1998 and that too, after the petitioner is released on bail in the registered case. That the verification of the said statements appears to have been

made on 18.12.98 and 21.12.98, a week prior to the taking of the action. Thus, in the absence of any live link between the alleged anti-social activity as disclosed in the grounds of detention and the impugned action taken by the detaining authority, the impugned order is bad in law. To support the statements, reliance is placed on the observations made by the Supreme Court in the case reported vide AIR 1994 SC 656.

5. It is also contended on behalf of the petitioner that the impugned order is rendered illegal on account of the detaining authority having not considered less drastic remedy by passing the order. That respondent no.1 has failed to consider the aspect of opposing the bail or cancellation of bail under section 437(5) of Cr.P.C. which has vitiated the subjective satisfaction reached by respondent no.1 and has rendered the impugned order illegal and thereby also, the order deserves to be quashed and set aside.

6. It may be noted that though the rule is served, none of the respondents have filed any affidavit-in-reply to controvert the allegations. That the learned AGP Mr. K.T. Dave was not in a position to explain the delay in taking the action. In the absence of any affidavit, even the grounds of detention themselves suggest that the detaining authority has not considered or explained any delay in taking the action on 24.12.98. Furthermore, the grounds of detention are devoid of any explanation as to why less drastic remedy like cancellation of bail which has been the allegation of repetition of alleged criminal activity has not been considered. Non-consideration of such aspect has also vitiated the subjective satisfaction rendering the impugned order bad in law.

7. On the basis of the aforesaid discussion, the petition is allowed. The impugned order dated 24.12.98 passed by respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner- Rathod Balsingji Laxmanji is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

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